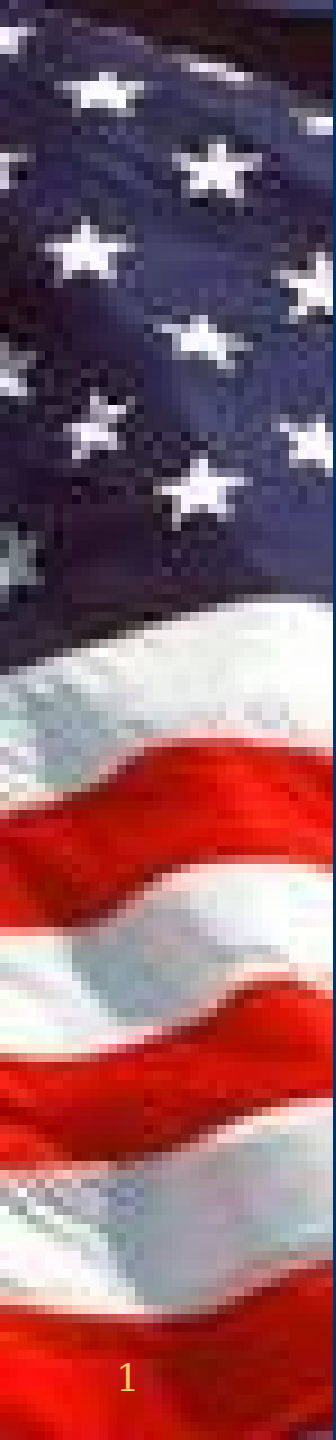


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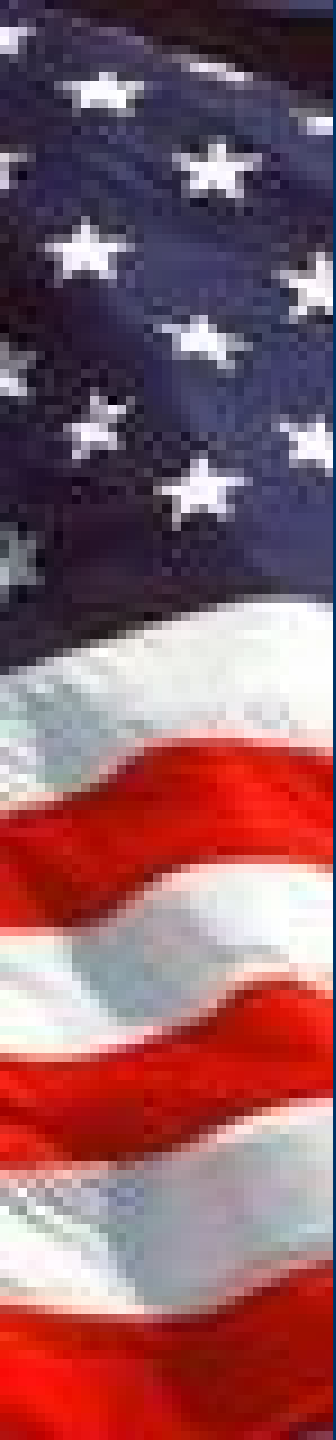
Civilians During Military Operations

**Maj Lisa L. Turner
ACSC**

New World “Disorder”



Herbert Knosowski / AP



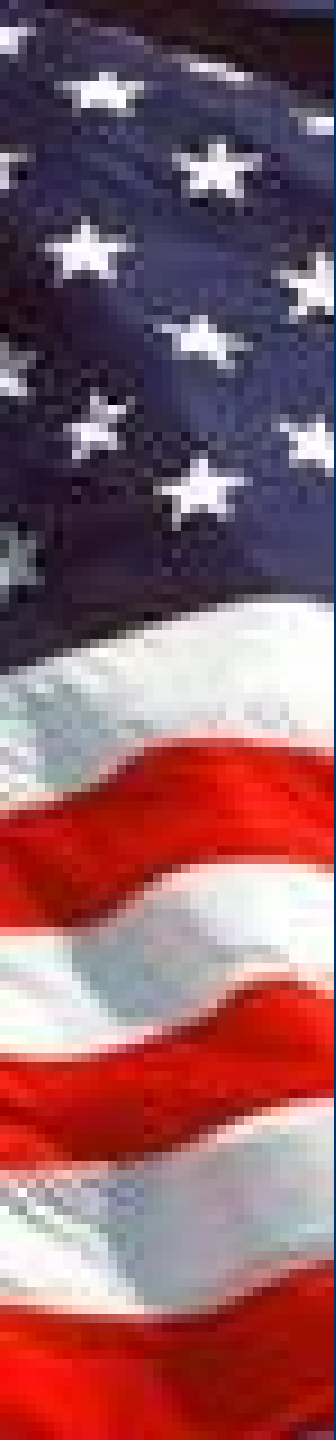
Nexus To Hostilities

**Peace
Ops**

**Smaller Scale
Contingencies**

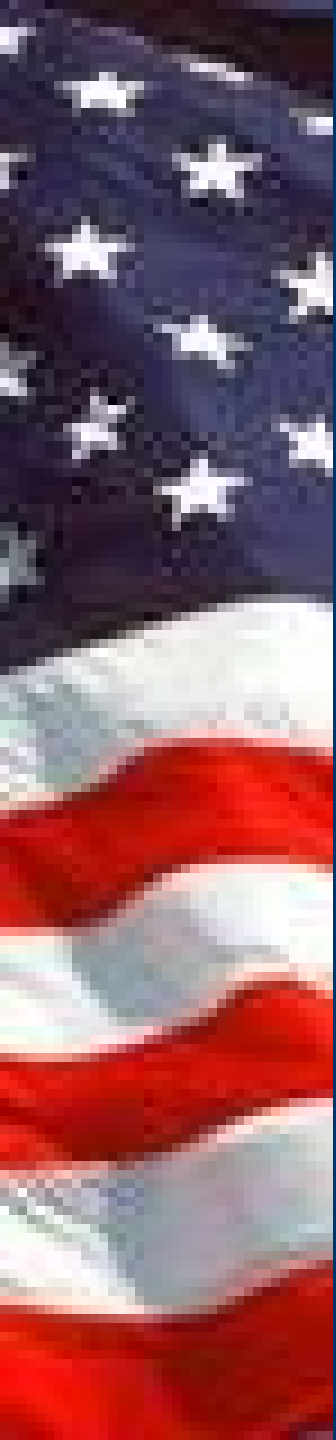
**Major
Theater
r
Wars**

Spectrum of Conflict

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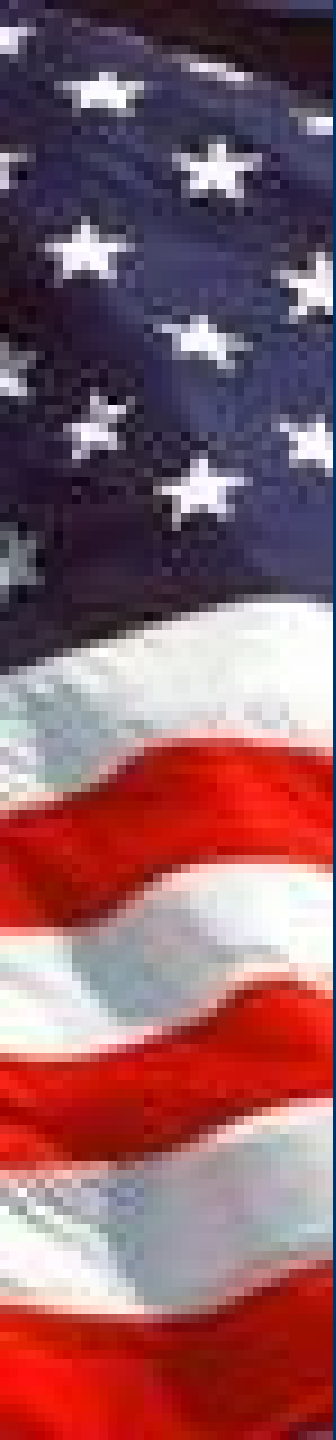
Overview

- ♦ **Defining the Players**
- ♦ **Common Issues**
 - **Nexus to Combat**
 - **Uniforms/Weapons**
 - **Status on Capture**
 - **SOFAs**
 - **Medical/Legal Support**

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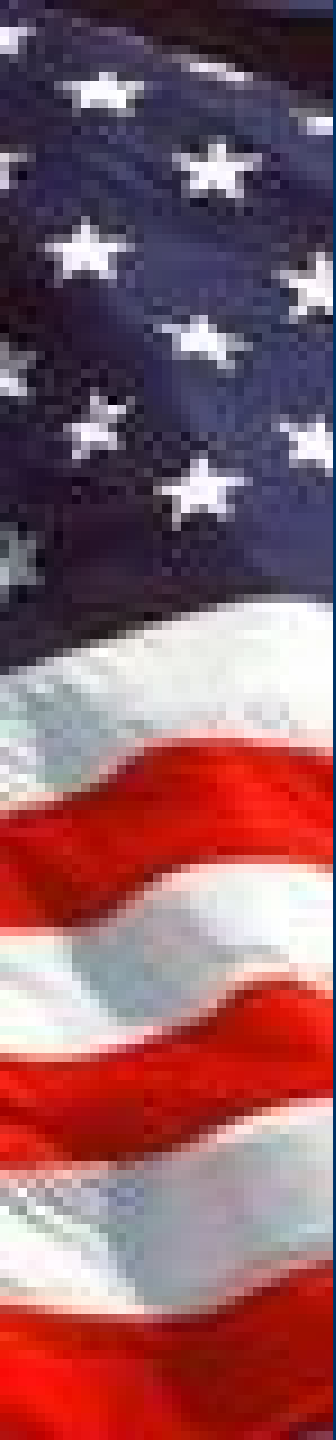
Civilian Employees

- ♦ Over 17 nations
- ♦ 700 deployed to Bosnia/Joint Endeavor
- ♦ 4,500 deployed to the Middle East/Desert Storm
- ♦ **Geneva Law:** “persons who accompany the armed forces without actually being members thereof” and who have “received authorization, from the armed forces which they accompany.”
- ♦ Emergency-Essential Positions

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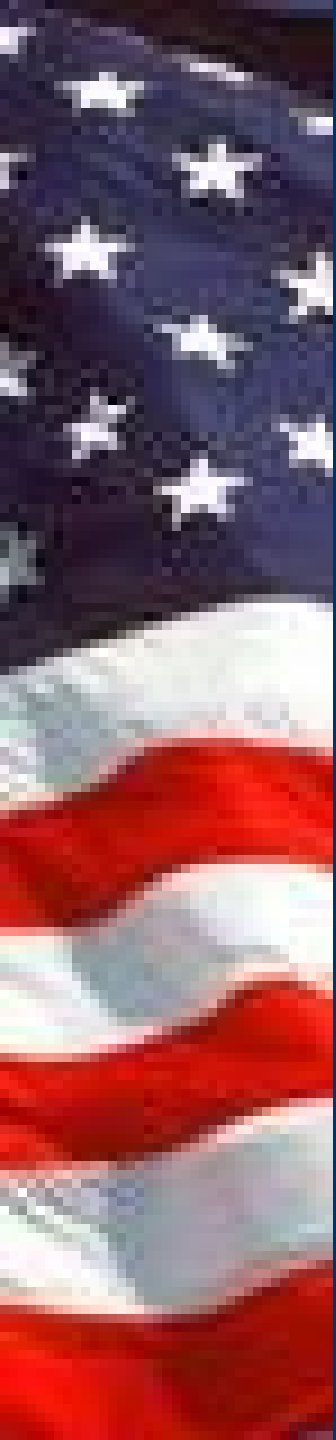
Contractors

- ♦ 1 of 50 people deployed for Desert Storm
- ♦ 1 of 10 in Balkans
- ♦ **Geneva Law:** “persons who accompany the armed forces without actually being members thereof” and who have “received authorization, from the armed forces which they accompany.”
 - E.g., “supply contractors”/“civilian members of military aircraft crew”

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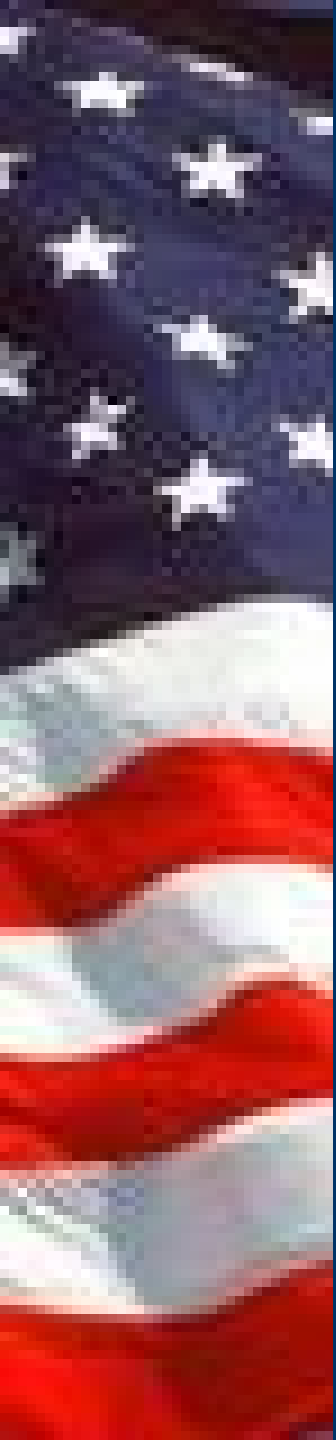
Contractors (cont.)

- ♦ **Systems Support** - systems throughout life cycle (including spare parts and maintenance) across the range of military operations e.g., Predator maint.
- ♦ **External Theater Support** - awarded/administered outside AOR. E.g., CRAF/LOGCAP
- ♦ **Theater Support** - awarded/administered in AOR

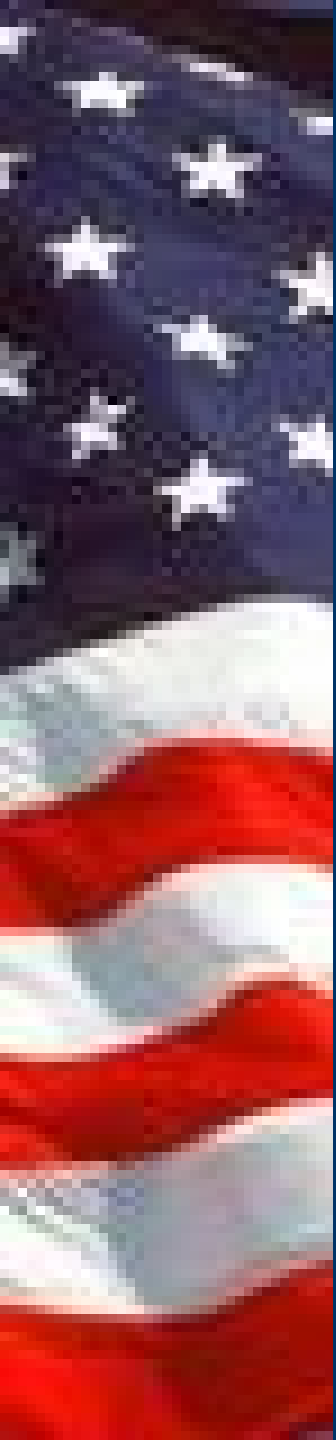
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Non-Affiliated Persons

- ♦ Media
 - War-Correspondents
 - Freelance journalists
- ♦ NGOs/PVOs
 - non-governmental and private voluntary organizations
- ♦ Refugees/Internally Displaced Persons

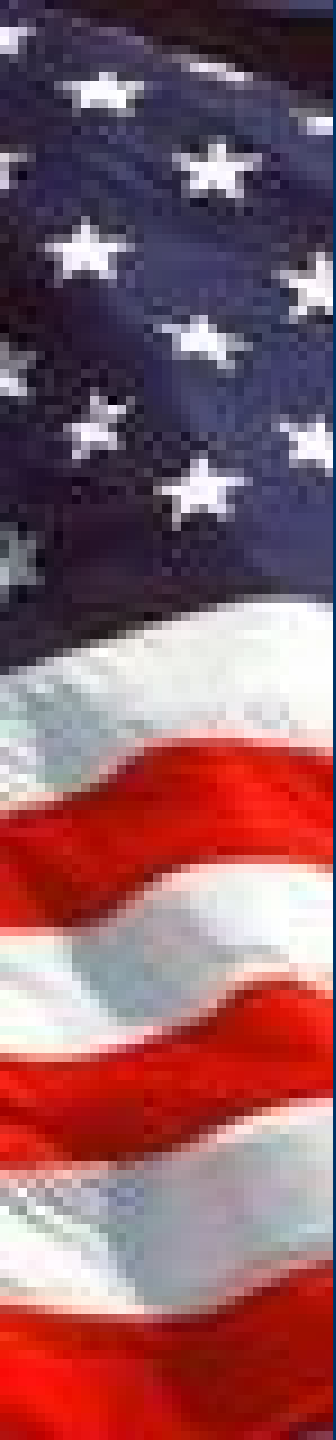
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Common Issues

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LOAC

- ◆ **International Armed Conflict**
- ◆ **US by Policy**
- ◆ The citizen must be a citizen and not a soldier [...] war law has a short shrift for the non-combatant who violates its principles by taking up arms

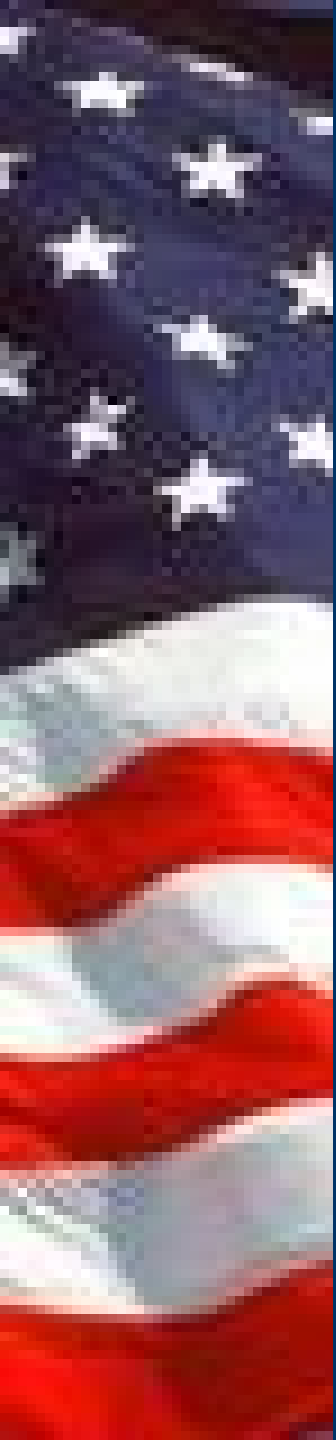
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LOAC

Combatant:

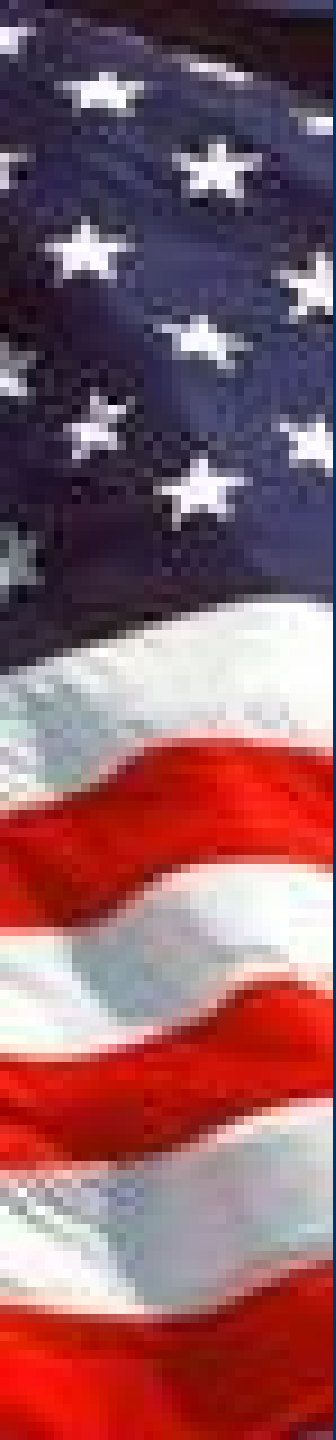
- ♦ **Command with Internal Disciplinary System**
- ♦ **Uniform**
- ♦ **Openly Armed**
- ♦ **Complies with LOAC**

(Cf. Additional Protocol I)

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Nexus to Combat

- ♦ Physical Proximity
 - Collateral Damage
- ♦ Functional Proximity
 - Direct participation
- ♦ Unlawful Combatant
 - Loss of civilian protections
 - Capturing state prosecution
 - War crimes exposure

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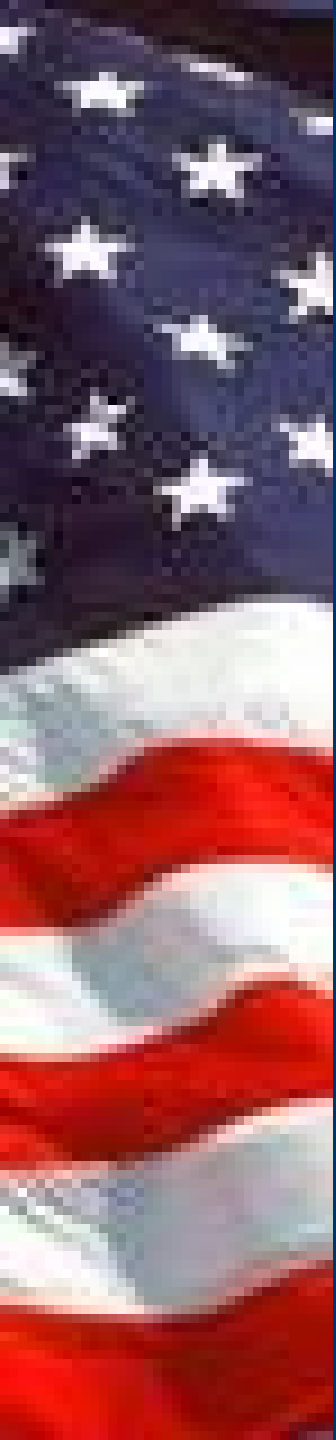
C²

♦ Civilian Employees

- Control - on-site supervisor
- Administrative remedies

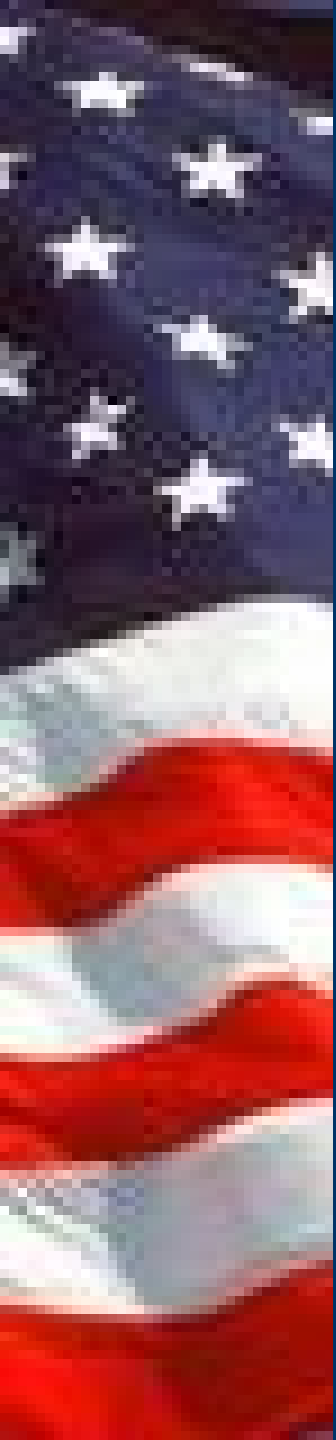
♦ Contractor

- Control - terms/conditions in SOW
- Not CC - through KO or KOR
- K remedies
- Some admin remedies e.g. limit access

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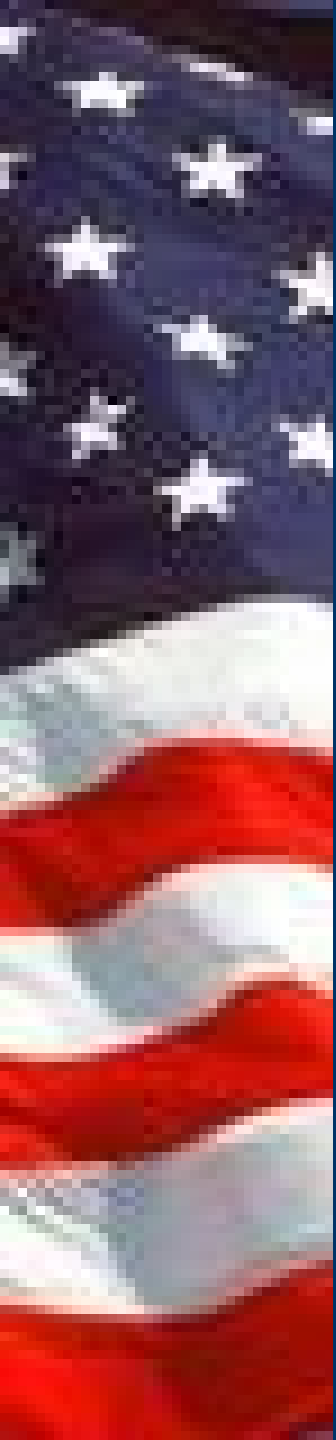
C²: Civilian Employees/Contractor S

- ♦ Extraterritorial Jurisdiction
 - Military Extraterritorial Jurisdiction Act 2000
 - Felony equivalent crime
 - Employed by or accompanying the force
 - U.S. District Court
 - Other misc. §

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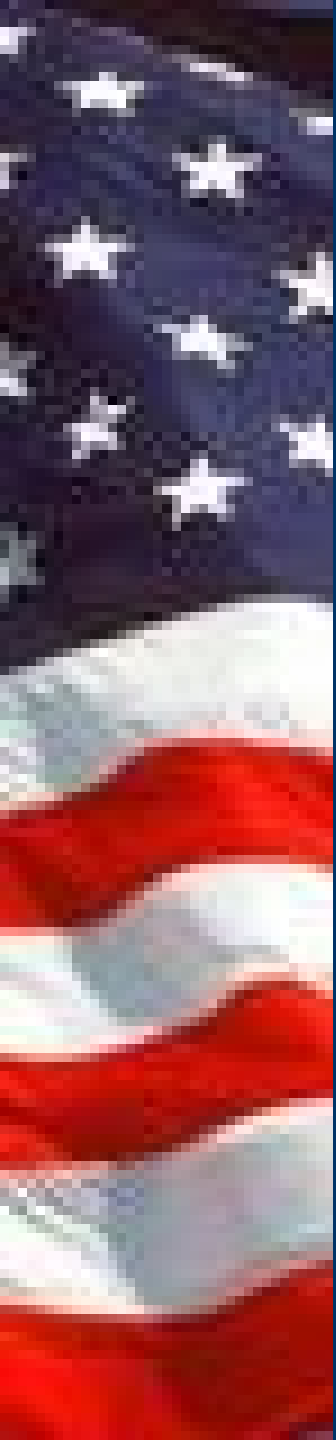
C²

- ◆ Non-Affiliated - Influence
 - **Media** - Open Access; JIB; Access; Credentials agreement; Support; Censor
 - **NGO/PVO** - Partners; CMOC; Support (e.g., armed escort, trans)

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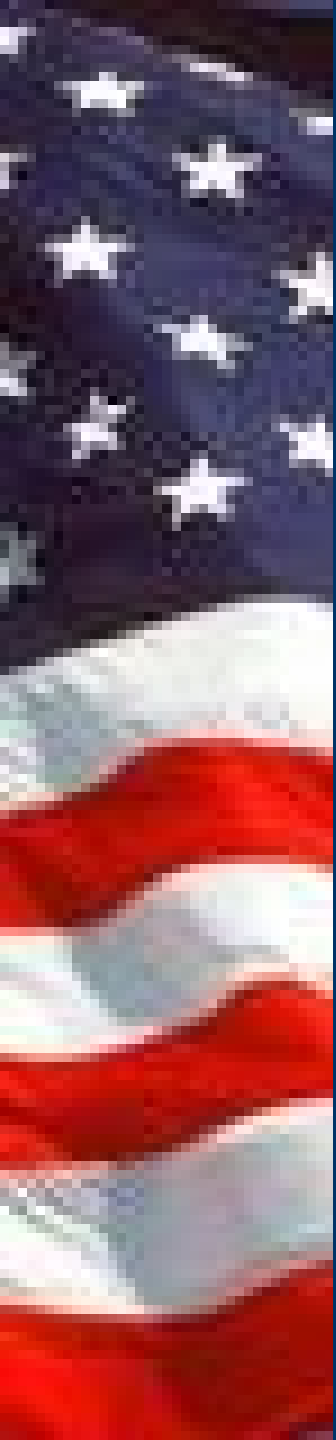
Wear of Uniforms

- ♦ **Civilian EEs/Contractors**
 - Theater/Component CC
 - Civilian EE/Grave Situations
 - Contract/Compelling reason
 - NBC
 - Distinguish from military
- ♦ **Non-Affiliated**
 - Up to them, but most don't
 - (media might - not advisable)

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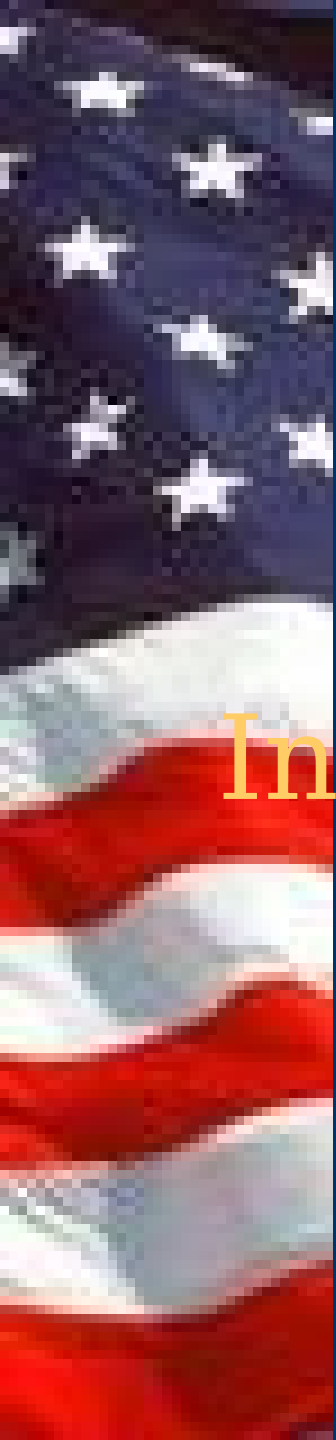
Arming Civilians

- ♦ **Civilian Employees/Contractors**
 - CINC permission/ Host Nation consultation
 - By-exception for personal protection
 - Voluntary acceptance
 - Military weapon/ammunition
 - Contract provisions
- ♦ **Non-Affiliated** - Can restrict credentialed media, others don't

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Status on Capture

- ♦ **POW**
- ♦ **Medical**
- ♦ **UN and Associated Personnel Convention**
- ♦ **Universal Declaration on Human Rights**
- ♦ **Common Article 3**
- ♦ **Additional Protocol II**
- ♦ **Additional Protocol I**
- ♦ **GC IV**

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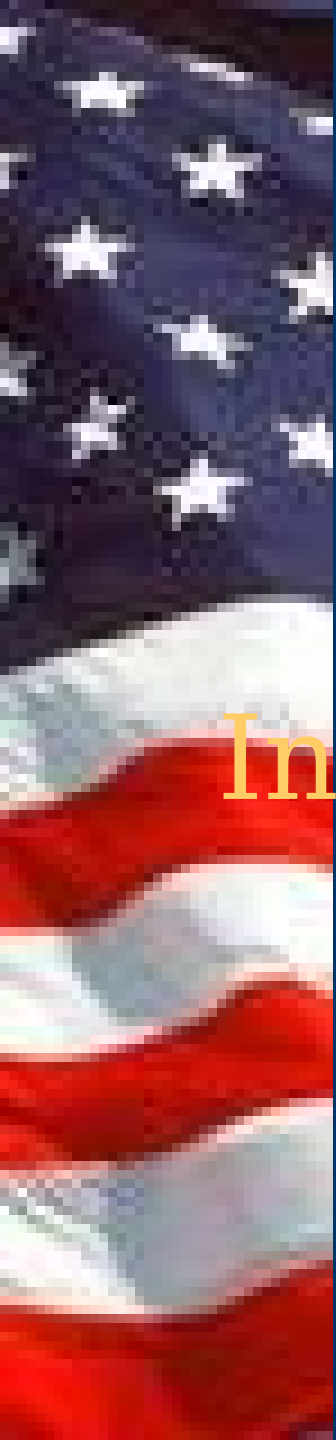
POW (Geneva III)

- ♦ Persons who accompany the armed forces without being members thereof

- Civilian Employees
- Systems Support Contractors
- External-Theater Support Contractors

International Armed Conflict

- ? Theater Support Contractors?
 - War Correspondents (may not desire)
- ♦ ID card - means to prove status
- ♦ If doubt - Treatment until determination by competent tribunal

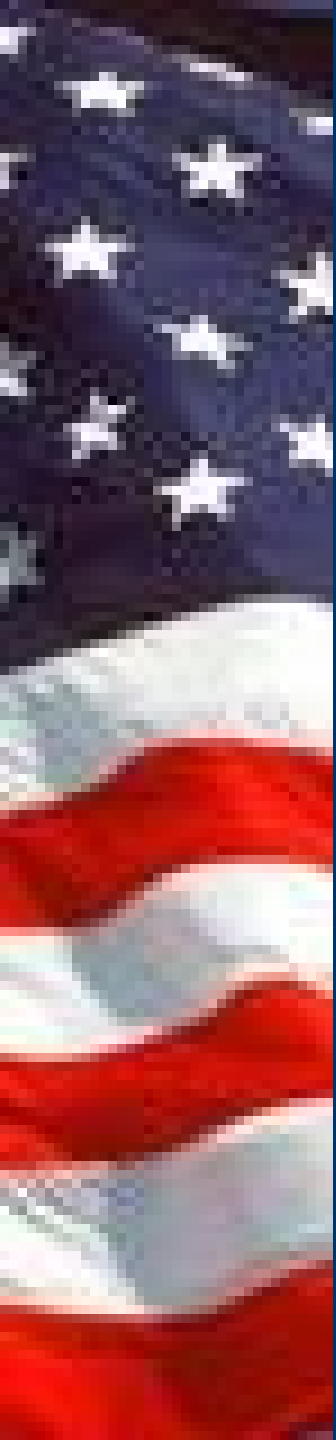
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Medical/Qualifying Aid (GC)

- ♦ Retained Persons
- ♦ POW treatment at a minimum
- ♦ DR/Nurses/Techs/ Red Cross/Aid Society
duly authorized by govts and other gov
notified

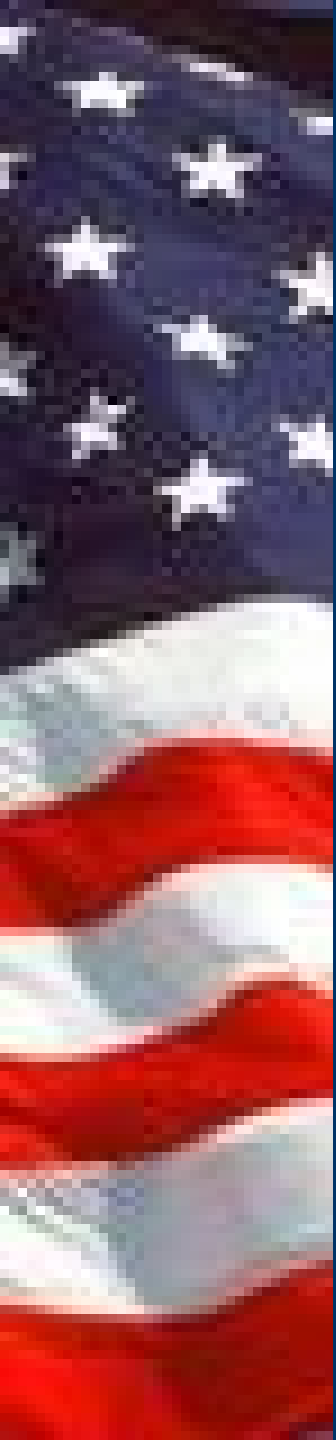
International Armed Conflict

- ♦ ID cards
- ♦ Additional Protocol II
 - internal conflict
 - respect, protect, help

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Safety of UN and Associated Personnel (US not ratified)

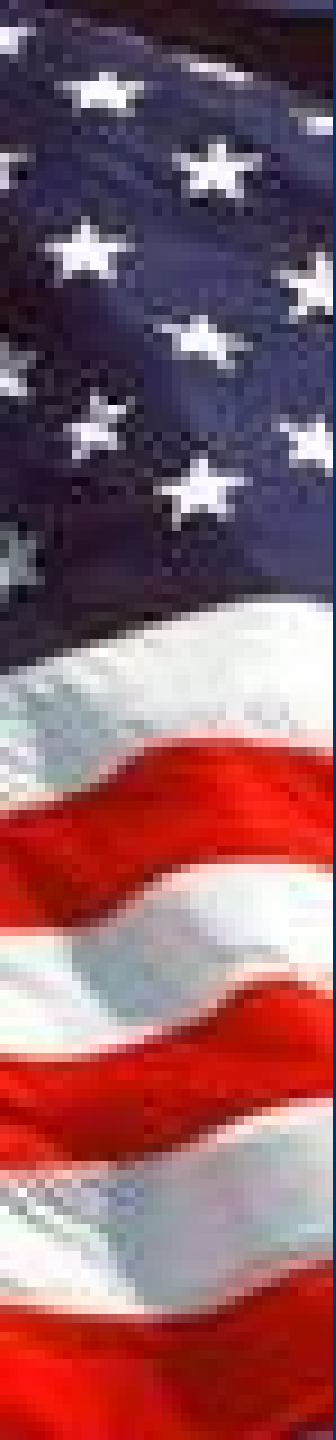
- ◆ Not protected under GC
- ◆ UN - “Blue Hats” e.g., UNMIH
- ◆ Associated - e.g., UNPROFOR under NATO + NGOs under K with UN
- ◆ Not UN missions where combatants
- ◆ ID Card - association with UN
- ◆ No interrogation / promptly released

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Expert on Mission

(Convention on Privileges and Immunities of the UN, Art. VI)

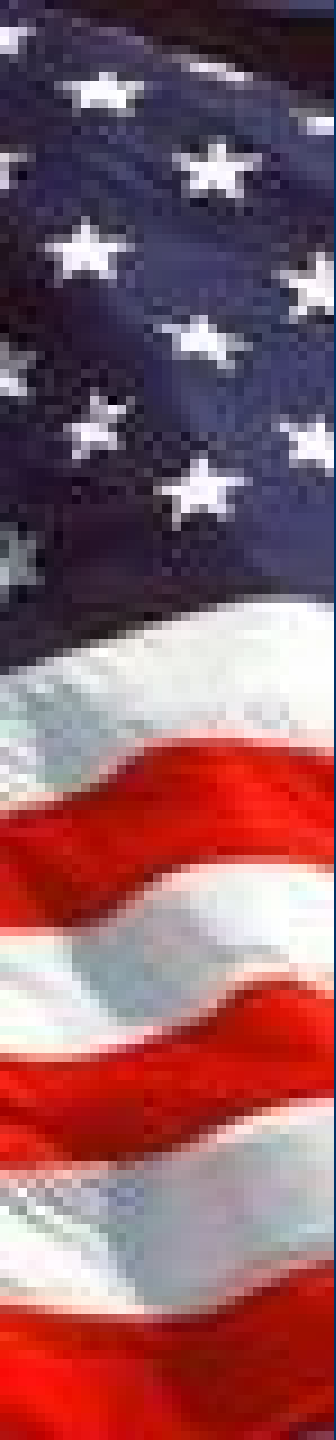
- ♦ Engaged by UN on UN missions
- ♦ Immunity from arrest/detention
- ♦ E.g., CWO Durant in Somalia

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Universal Declaration Human Rights

- ♦ Customary International Law
- ♦ Basic Humane Treatment
 - No arbitrate or capricious treatment
 - No torture, cruel, inhumane treatment
 - Life, liberty, security, due process, etc.

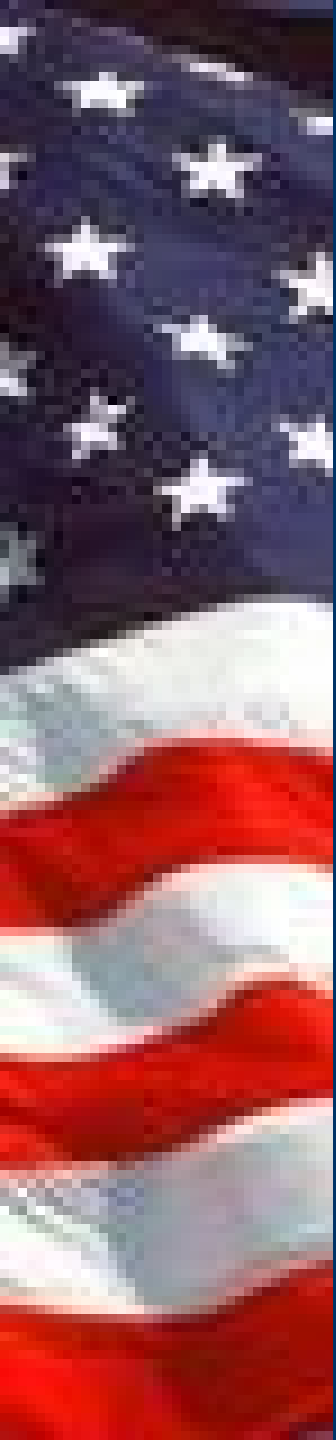
All Times, All People

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Common Article 3 (GC)

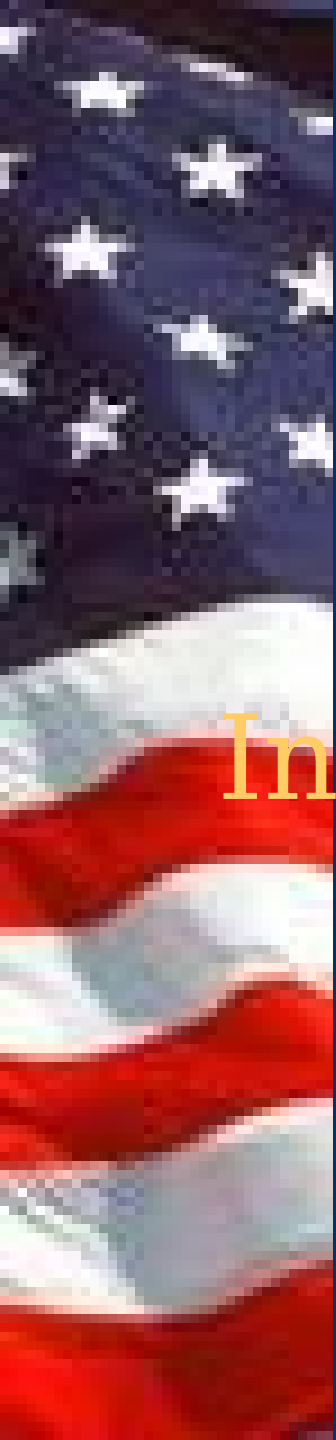
- **Minimum: Humane Treatment**
 - » **No Violence To Life And Person**
 - » **No Taking Of Hostages**
 - » **No Outrages Upon Personal Dignity**
 - » **Due Process: No Sentences And Executions Without A Fair Trial**
 - » **Collect And Care For Wounded And Sick**

Armed Conflict*

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Additional Protocol II

- ◆ **US not ratified**
 - ◆ **No direct participation**
 - ◆ **Detail to fundamental guarantees**
- Non-International Armed Conflict**
- E.g., Food, Potable water, health, hygiene, work conditions, interned/detainees away from hostilities, letters, etc.

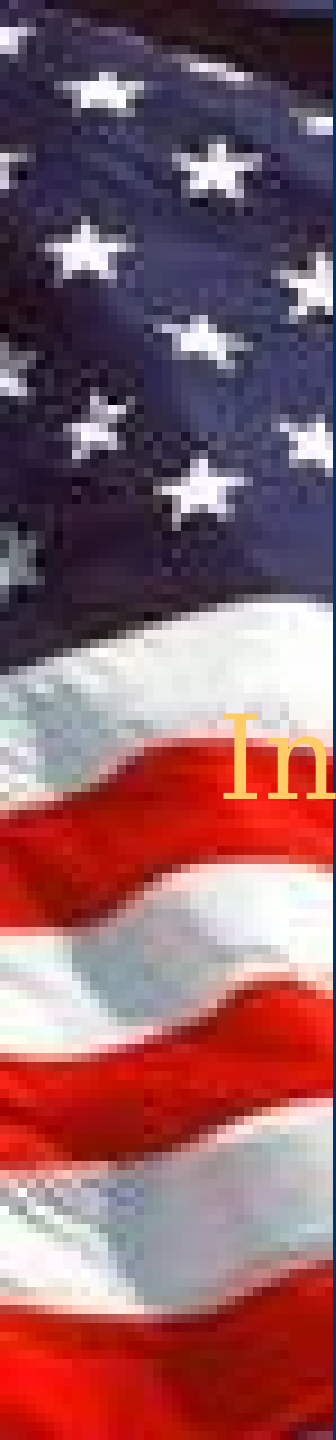
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Additional Protocol I

- ♦ US not ratified
- ♦ Humane treatment even for unlawful combatants

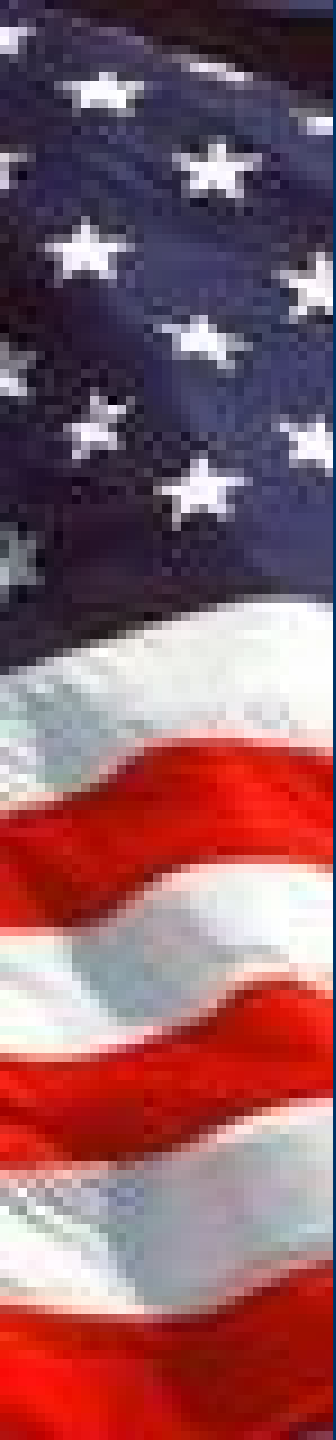
International Armed Conflict

- ♦ Misc. basic rights, e.g.,
 - life, liberty, well-being, due process, etc.

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Geneva IV

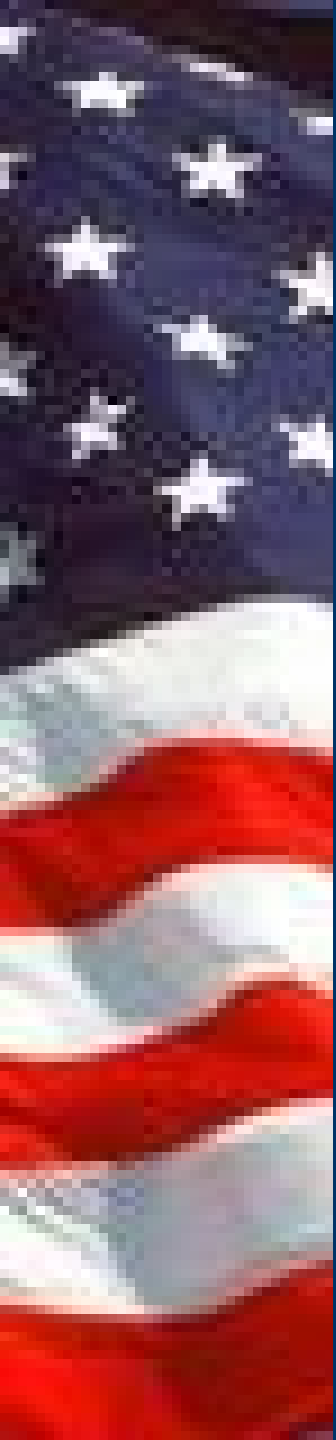
- ◆ Only if not protected as POW
 - ◆ In the hands of states of which they are not nationals and which do not have diplomatic ties; e.g. some theater support contractors
 - ◆ Humane treatment, detailed internment requirements similar to POW
- ## International Armed Conflict

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Refugees/Stateless Persons

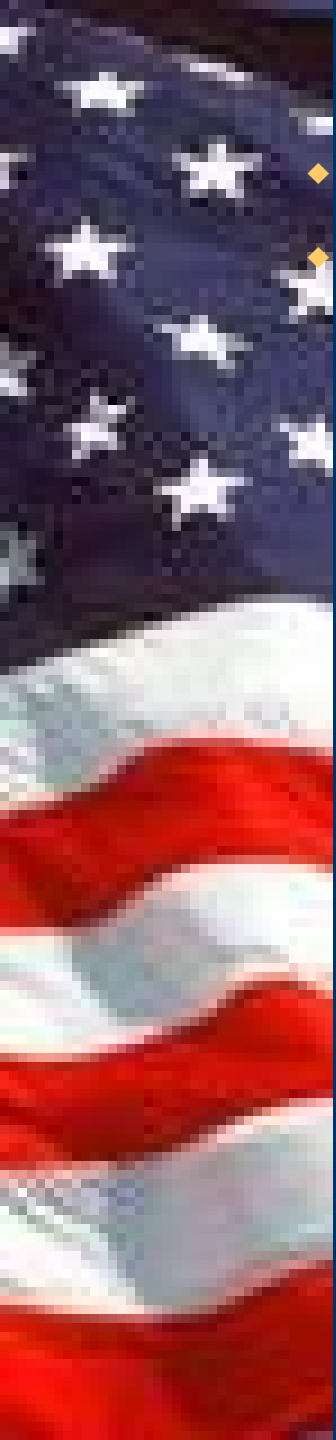
- ♦ GC IV + API (Even when from state with diplomatic ties)
- ♦ Refugee Convention
- ♦ Rights: civilian protections, e.g., humane treatment, child education, due process, free association, employment, non-refoulment, etc.
- ♦ State law

Armed Conflict

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IDPs

- ◆ No treaties dealing specifically with them
- ◆ Civilian Population, e.g., Common Article 3, Declaration on Human Rights, ect.
- ◆ Guiding Principles on IDPs - 1998
 - Not treaty or customary law

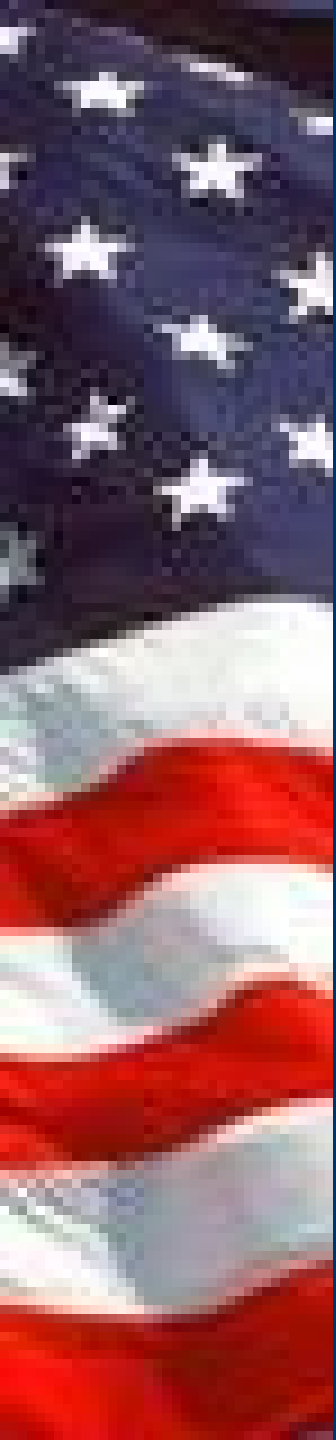
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Asylum

- ♦ Right to Emigrate v. Immigrate

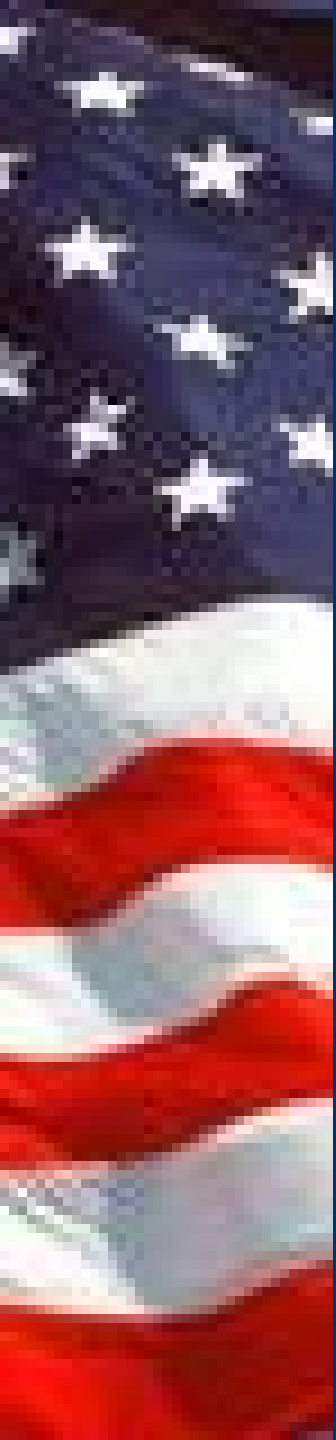
- ♦ Asylum -

- Refugee Convention protections - high seas/State territory
- US protections - fear persecution b/c race, religion, nationality, social group, political opinion
 - State Dept is lead
 - DOD can't grant
 - Refer to nearest mission in foreign St
 - COC + OSI notifications, etc.

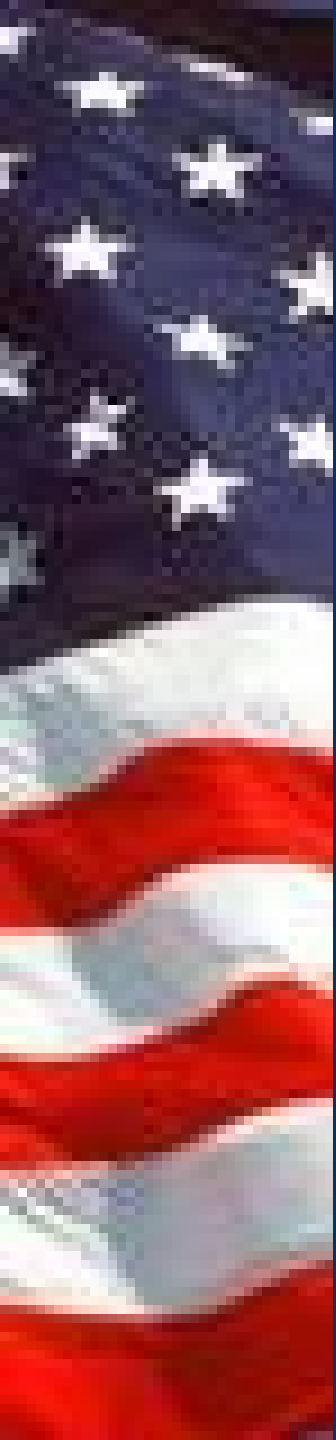
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Temporary Refuge

- ♦ Humanitarian protection under conditions of urgency b/c imminent danger to life/safety e.g., mob
- ♦ No protection from law enforcement
- ♦ Foreign territory or other than high seas
- ♦ Senior military officer grants
- ♦ COC + OSI notifications, etc.

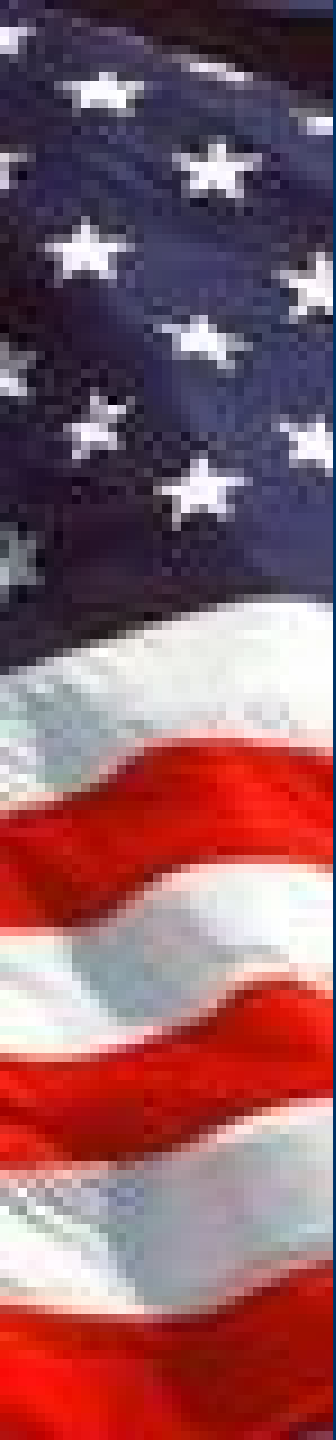


SOFA's & Foreign Criminal Jurisdiction

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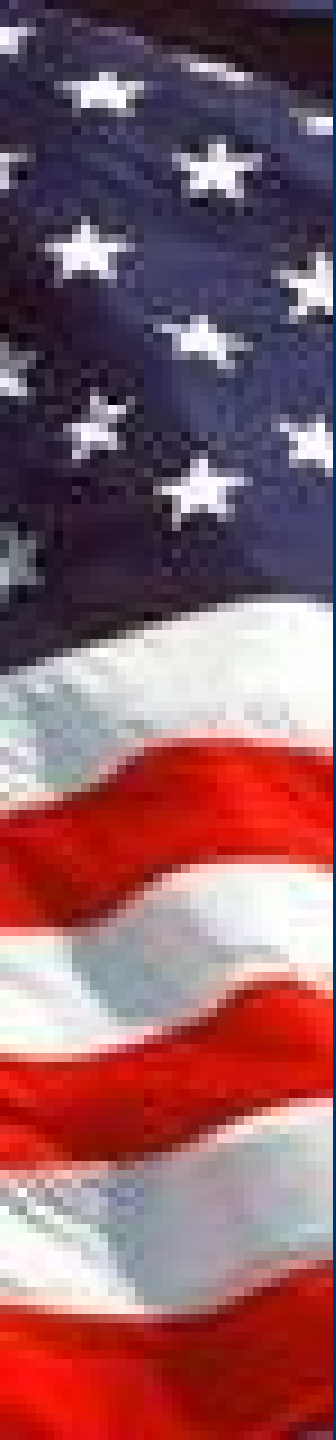
Host Nation Law

- ♦ **In Absence Of International Agreement (SOFA), Forces May Be Subject To Host Nation's Civil And Criminal Jurisdiction Without Benefit of a SOFA**
- ♦ **But Host Nation Systems May Have Broken Down**

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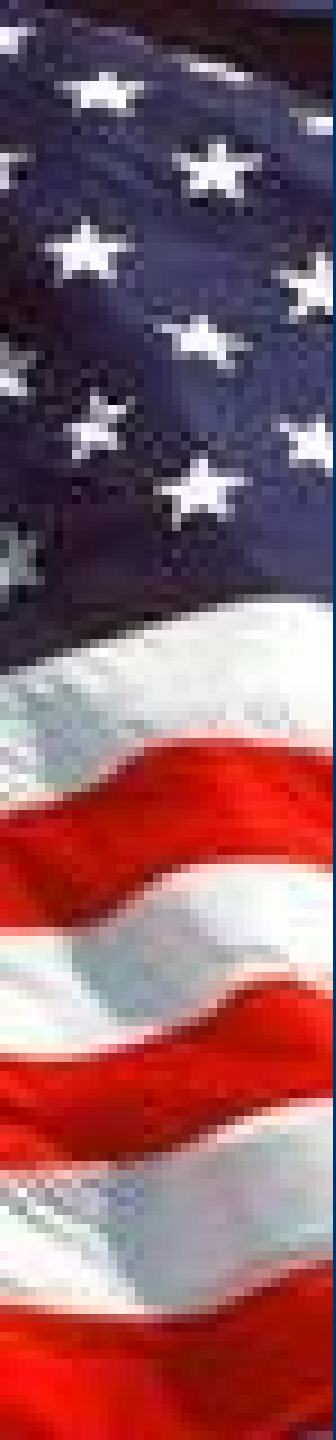
SOFA ISSUES

- ♦ **FCJ (more on this later)**
- ♦ **Property issues - right to use of facilities**
- ♦ **Labor Issues - hiring of local civilians directly or through host government**
- ♦ **Claims - commitment to pay claims**
- ♦ **Customs and Taxes - exemption procedures**
- ♦ **Airports and Ports - services “requested and received”**

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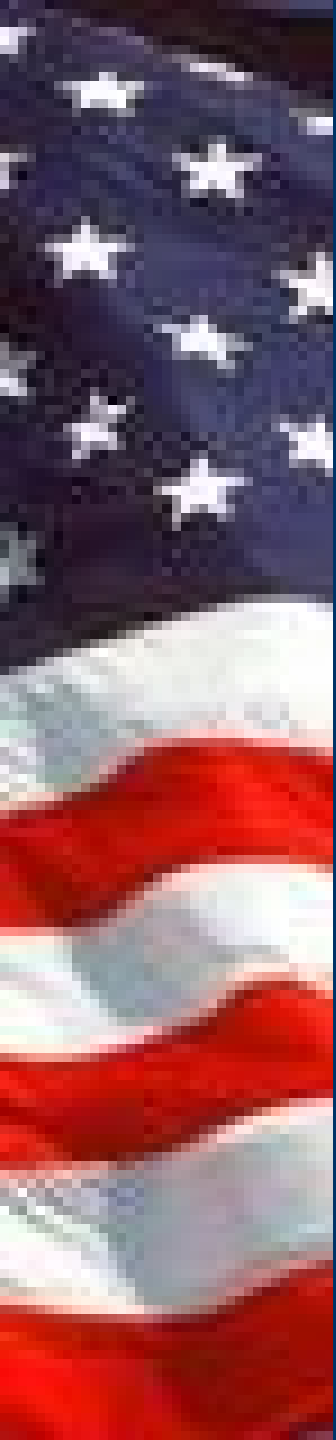
Status of Forces Agreement

- ♦ **Look at Each SOFA**
- ♦ **Most likely coverage of civilian employees only**
- ♦ **Even then, not all same coverage as military**
- ♦ **E.g., LOGCAP in Hungary**

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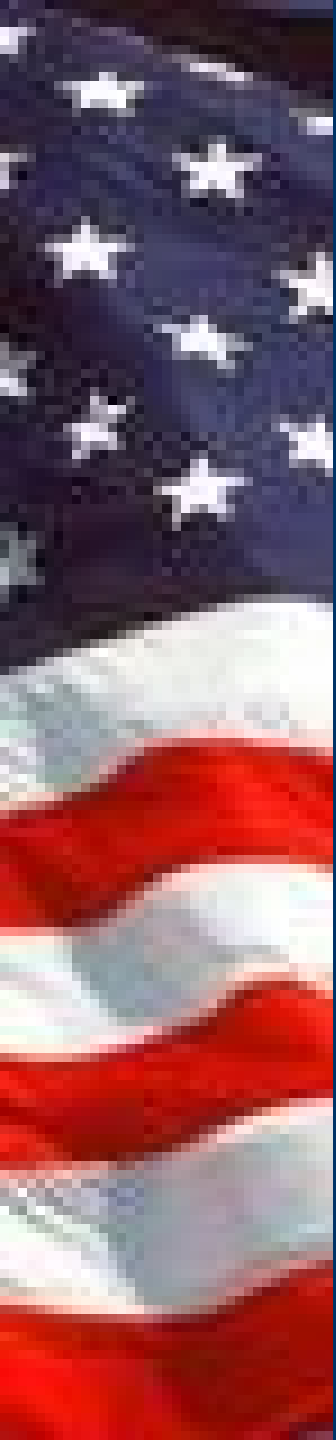
FCJ

- ♦ Look at SOFA
- ♦ Likely - Civilian employee protection only (civilian component e.g. NATO)
- ♦ Contact functional COC
 - Debate on primary concurrent jurisdiction esp. in official duty cases
 - Is there suitable corrective action available within the command

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Medical

- ♦ **Civilian Employees** - Prep before hand, in theater - comparable to military
- ♦ **Contractors** - what is contract (usually not routing care) - in performance of duties e.g., shots has been done
- ♦ **Others** - emergency
- ♦ Be sensitive to host nation limitations

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Legal

- ♦ **Civilian Employees** - mission related before, during, and after deployment
 - Non-mission related as available
- ♦ Those “serving with/employed by/accompanying” - notary services
- ♦ **Others** - no (unless contract specifies)
- ♦ Is there another way to provide benefits, e.g., retiree - when not in violation host nation concerns and you have time

